CA 1111/97

XII-189 / (Jail)
C. J. P. R. 11/94/2,000

CF0000061623

High Court of Madhya Pradesh
JABALPUR
27 MAY
Reg. No. 412
Recept Clerk
High Court, Jabalpur

APPEAL OF PRISONER

No. 1751/9 Name महिला बंदिनी हीराबाई

Father's name पति जीरम कंवर उम्र - २५ वर्ष Division Bench (Crimin...

Residence ग्राम- बोरसी थाना-कसडोल Age जिला- रायपुर (म.प्र.)

Sentened to आजीवन कारावास, 1000 रु० On २४/३/९७

Under section या ६ माह ३०२ I.P.C. by मान. अति. जिला एवं सत्र. न्यायाधीश महोदय रायपुर

It is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the base for seven days unless legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement .....

2 Date on which copy received 4/97

3 Date on which Appeal sent 4/97

4 Whether the prisoner wishes to be represented or not – Yes / No

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No. 1751/9 Name हीराबाई w/o जीरम कंवर

Confined in केन्द्रीय Jail रायपुर (म.प्र.)

No. 147/तिरेपी/97 Dated 24/4/1997

Forwarded to the CHIEF JUDICIAL MAGISTRATE अतिरिक्त पुलिस अधीक्षक महोदय रायपुर (म.प्र.)

together which a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

मेरा प्रकरण क्रमांक 10/94 की
उपरोक्त निर्णय प्रतिलिपि एक।

Superintendent
Central Jail, Raipur. (M.P.)
Jail

Date of receipt in ..... office .....

Date of receipt record to accompany the .....

Memo of Appeal to the Appellate court .....

No ..... Dated ..... 199.....

Forwarded to the .....

.....

Date of receipt in Appellate Court .....

(P. T. O.)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक G.A. 111/97 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench: -

Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. Dhirendra Mishra, JJ.

13-4-2006

Mr. Prakash Tiwari, counsel for the appellant.

Mr. U.N.S. Deo, Additional Public Prosecutor with Mr. M.P.S. Bhatia, Panel Lawyer for the State/respondent.

Oral judgment dictated on *Dais*.

Per L.C. Bhadoo, J: -

By this appeal under Section 374 (2) of the Cr.P.C. the appellant has questioned legality and correctness of the judgment of conviction and order of sentence dated 28th March, 1997, passed by the Additional Sessions Judge, Baloda Bazaar, in Sessions Trial No.101/94, whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C., for committing the murder of her son namely, Guddu @ Lakshman, sentenced her to undergo imprisonment for life and pay a fine of Rs.1,000/-, in default of payment of fine to further undergo R.I. for six months.

The case of the prosecution, in brief, is that on 2-8-93 at about 5 p.m. the accused/appellant attacked her son Guddu @ Lakshman with a carpenter axe. Report of the matter was lodged by Brijmohan (PW-3), Kotwar, under Ex.P-4 in Police Station: Kasdol. Receiving this report, the Station House Officer of the Police Station registered offence under Section 307 of the I.P.C. and took up the investigation. In the mean time,

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	merg intimation Ex.P-12 was given by Firan regarding the death of Guddu @ Lakshman in the hospital on 3-8-93 at 11.30 p.m. upon which the offence was converted into Section 302 of the I.P.C. After giving notice to the Panchas, Panchnama Ex.P-5 of the dead body of Guddu @ Lakshman was prepared by the Investigating Officer. Sari of the accused was taken into possession under Ex.P-7. Plain soil and blood stained soil were taken into possession under Ex.P-10. The weapon of offence, carpenter axe, was taken into possession under Ex.P-11. Site plan of the place of occurrence Ex.P-13 was prepared by the Patwari. Injury of Guddu @ Lakshman was examined by Dr. A.K. Jhanwar (PW-1) and he prepared the injury report Ex.P-1. Post-mortem was conducted by Dr. P.K. Tiwari (PW-2) of Primary Health Centre, Kasdol, and he prepared the post-mortem report Ex.P-2. Recovered articles were sent for chemical examination to Forensic Science Laboratory, Raipur, from where the report Ex.P-16 was received. After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate, First Class, Baloda Bazaar, who in turn committed the case to the Sessions Judge, Raipur, from where learned Additional Sessions Judge, Baloda Bazaar, received the case on transfer for trial. The prosecution in order to establish charge against the accused examined 12 witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which she admitted commission of crime by her and the evidence given by her own son Hemant Kumar (PW-4) who witnessed the crime. She stated that she committed the crime out of anger.	

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Learned Additional Sessions Judge after hearing respective counsel, convicted and sentenced the accused as mentioned in para 1 of this judgment.

We have heard Mr. Prakash Tiwari, learned counsel for the appellant and Mr. U.N.S. Deo, learned Additional Public Prosecutor with Mr. M.P.S. Bhatia, learned Panel Lawyer on behalf of the State/respondent.

The homicidal death of Guddu @ Lakshman is not in dispute.

As far as involvement of the accused/appellant in commission of crime is concerned, Hemant Kumar (PW-4), son of the accused and brother of the deceased, has categorically stated in his evidence that at the time of incident he was at the residence and his mother Heera Bai assaulted his brother with a carpenter axe on the neck, as a result of which he died. He does not know as to why his mother assaulted the deceased.

The above evidence has been admitted by the accused in her statement under Section 313 of the Cr.P.C. She has admitted the commission of crime and she has stated that she committed the crime out of anger. In cross-examination of this witness (PW-4 Hemant Kumar), defence has not been able to elicit any circumstance, which makes the evidence of this witness unreliable or untrustworthy. Moreover, the evidence of this witness stands corroborated by the fact that the carpenter axe was recovered at the instance of the accused, same was sent for chemical examination to the Forensic Science Laboratory and as per the Laboratory's

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report, the axe was stained with blood. Even the sari of the accused was also found stained with blood. Therefore, in view of the above evidence, involvement of the accused/appellant in the crime in question is established.

Learned counsel for the appellant argued that it is true that the accused assaulted her own son aged about 2 ½ years with a Vasula, but in the ordinary course, no mother would like to kill her own child and as has been stated by the accused in her statement, out of anger she assaulted the deceased. Elaborating the argument, Mr. Prakash Tiwari also submitted that there is nothing on record, which shows that the accused assaulted the deceased with intention to cause death or there was no pre-plan or pre-meditation.

On the other hand, Mr. Bhatia supported the judgment of the trial Court.

In order to appreciate the arguments we have perused the evidence. In the first instance, Hemant Kumar (PW-4), brother of the deceased, has categorically stated that he does not know as to why his mother assaulted the deceased. The accused has categorically stated that out of anger she assaulted the deceased. The boy was hardly 2 ½ years of age, therefore, it cannot be said that the accused was having any grudge against him so as to reach to the extent of killing him. In the circumstances, intention part is missing in this case, as has been held by the Apex Court in the matter of **Shivappa Buddappa Kolkar alias Buddappagol v. State of Karnataka and others** reported in **AIR 2004 Supreme Court 5047** that

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"Accused during quarrel suddenly took axe and gave solitary blow on back of head of deceased resulting into his death - No pre-meditated or pre-arranged plan to attack deceased - Medical evidence not showing that injury inflicted by itself would be sufficient in ordinary course of nature to cause death - Accused could be imputed with knowledge that injury inflicted by him was likely to cause death."

In the present case also, the deceased was assaulted on 2nd August, 1993 at 5 p.m. and he died next day on 3rd August, 1993 at 11.30 p.m. i.e. after about 30 hours of the attack and moreover the doctor has stated that had the proper treatment given to him, there were chances of survival of the child. The doctor has not stated that the injury inflicted on the deceased was sufficient in the ordinary course of nature to cause death.

Therefore, looking to the circumstances, intention cannot be attributed to the accused, however, it can safely be inferred that while assaulting the deceased with a deadly weapon like carpenter axe, that too a 2 ½ years' child on his neck, the accused had definite knowledge that by causing such an injury with carpenter axe, she may likely to cause death. In the circumstances, offence against the accused/appellant under Section 304 Part-I of the I.P.C. was made out. Therefore, conviction under Section 302 of the I.P.C. and sentence imposed upon the appellant under that Section cannot be sustained.

In the result, the appeal partly succeeds and the same is partly allowed. Conviction and sentence imposed upon the accused/appellant under

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	Section 302 of the I.P.C. are set aside, instead thereof, she is convicted under Section 304 Part-I of the I.P.C. and sentenced to undergo R.I. for ten years. The accused is stated to be in custody since 4-8-93, which has not been disputed by learned Additional Public Prosecutor. Therefore, the accused has already undergone the sentence imposed upon her and as such, she be set at liberty forthwith, if not required in any other case. Parties are entitled for certified copy of this order. Sd/- L.C.BHADOO Judge	Sd/- Dhirendra Mishra Judge

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